

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SONOS, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

No. C 20-06754 WHA

No. C 21-07559 WHA

(Consolidated)

ORDER RE TODAY'S HEARING

As stated on the record during today's hearing, the jury will decide whether the purported design-around infringes unless the evidence is so clear that the Court can resolve the issue under Rule 50 of the Federal Rules of Civil Procedure. There will be no separate bench trial.

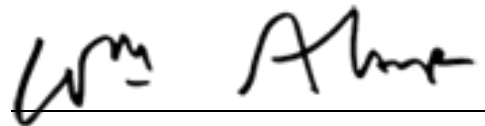
In addition, as stated on the record during today's hearing, the '615 patent is out of the case. "It is a claimant's burden to keep the district court clearly apprised of what parts of its claim it wishes to pursue and which parts, if any, it wishes to reserve for another day." *Silicon Graphics, Inc. v. ATI Techs., Inc.*, 607 F.3d 784, 801 (Fed. Cir. 2010). In the briefing on the renewed motion to realign the parties, both sides provided charts setting out the claims to be tried (Dkt. Nos. 477 at 3–4; 513 at 7). Neither side included claims related to the '615 patent. In other words, despite Google's present assertions that there is a live case or controversy with respect to invalidity of claims 18, 19, and 25 of the '615 patent, Google did not include invalidity of claims 18, 19, and 25 of the '615 patent in its list of "remaining claims" (Dkt. No. 513 at 7). What's more, Google referred to the '615 patent as a "patent[]" that w[as] previously

1 asserted in this action” (Dkt. No. 513 at 10). On March 29, 2023, the night before the hearing
2 on the renewed motion to realign and the final dispositive motions, Google withdrew its
3 opposition to the renewed motion to realign (Dkt. No. 555). But in doing so, it did not indicate
4 that it had changed its position on the ’615 patent. And, even if it had, it was too late.
5 Invalidity of claims 18, 19, and 25 of the ’615 patent was abandoned long ago.

6 Finally, as stated in a companion order, this action is referred to Judge Thomas Hixson
7 for mediation (Dkt. No. 575).

8 **IT IS SO ORDERED.**

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10 Dated: April 20, 2023.

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13 WILLIAM ALSUP
14 UNITED STATES DISTRICT JUDGE
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